

Message Text

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TO AMEMBASSY MOSCOW PRIORITY

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FOR MATLOCK FROM SHINN

E.O. 11652: GDS

TAGS: OGEN

SUBJECT: OFFICIAL-INFORMAL

1. FOLLOWING IS THE TEXT OF A MEMORANDUM BY A DEPARTMENT OF STATE LAWYER ABOUT THE YESSENIN-VOLPIN V. NOVOSTI LAWSUIT. YOU MIGHT WISH TO PASS IT TO LEON LIPSON INFORMALLY FOR HIS BACKGROUND INFORMATION.

BEGIN TEXT. YOU HAVE ASKED ME FOR MY ANALYSIS OF THE LAW SUIT AGAINST TASS AND NOVOSTI AND ITS RELATIONSHIP TO THE PRESS SITUATION IN MOSCOW. THE CASES ARE STRIKINGLY SIMILAR IN THEIR FACTS, BUT IN NEW YORK, THE CASE WAS DISMISSED BECAUSE TASS AND NOVOSTI WERE FOUND TO BE IMMUNE UNDER OUR LAW BECAUSE THEY ARE AGENCIES OF THE SOVIET GOVERNMENT.

IN THAT CASE, YESSENIN-VOLPIN V. NOVOSTI AND TASS (DECIDED IN JANUARY OF 1978), VOLPIN CLAIMED THAT HE HAD BEEN LIBELED

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BY STATEMENTS PUBLISHED IN RUSSIA AND GERMANY THAT HE WAS UNDER PSYCHIATRIC CARE IN THE UNITED STATES. VOLPIN WAS A SOVIET MATHEMATICIAN WHO EMIGRATED TO THE UNITED STATES IN 1970. WHILE IN THE USSR, HE HAD BEEN A DISSIDENT AND WAS CONFINED TO PSYCHIATRIC INSTITUTIONS BY THE SOVIETS. WHILE IN THE WEST, HE WAS NOT UNDER ANY PSYCHIATRIC CARE.

THE DECISION CONCLUDED THAT TASS AND NOVOSTI WERE ENTITLED TO IMMUNITY UNDER THE U.S. SOVEREIGN IMMUNITY ACT. ADDITIONALLY, THE COURT NOTED THAT LIBEL WAS A TORT FOR WHICH SPECIFIC EXEMPTION WAS RECOGNIZED, I. E. FOREIGN GOVERNMENT COMMERCIAL ENTITIES WERE IMMUNE FROM LIBEL SUITS IN THE UNITED STATES.

A REVIEW OF OUR FILES REVEALS THAT THE SOVIETS TRIED VERY HARD TO GET THE STATE DEPARTMENT TO INTERVENE WITH THE COURT TO ARGUE THAT TASS AND NOVOSTI WERE IMMUNE. WE RESPONDED BY POINTING OUT THAT UNDER THE NEWLY ENACTED SOVEREIGN IMMUNITY LAW, THE DECISION WAS UP TO THE COURT AND THAT WE DID NOT INTERVENE. UNDER THE OLD LAW, A DETERMINATION OF SOVEREIGN IMMUNITY WAS MADE BY THE DEPARTMENT OF STATE AND THEN CONVEYED TO THE COURT AND THE SOVIETS WERE APPARENTLY NOT FAMILIAR WITH THE NEW PROCEDURE.

IT IS INTERESTING THAT THE SOVIETS ARGUED THAT IF THEY WERE SUBJECT TO THE JURISDICTION OF THE COURT, THERE WAS NO LIBEL BECAUSE THE STATEMENTS WERE MADE IN RUSSIA AND GERMANY AND NOT WIDELY AVAILABLE IN THE UNITED STATES.

THIS CASE HAS NO PRECEDENTIAL VALUE IN SOVIET COURTS. HOWEVER, THERE IS A BASIC UNFAIRNESS IN THE SITUATION WHICH PERMITS THEIR REPORTERS TO BE IMMUNE FROM OUR COURTS SIMPLY BECAUSE THEY ARE STATE ORGANS. WE CAN POINT OUT THAT THE

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FACTS IN THE VOLPIN CASE ARE VERY SIMILAR, E. G. A CITIZEN CLAIMING THAT HE HAS BEEN LIBELED BY STATEMENTS PUBLISHED IN ANOTHER COUNTRY, BUT THAT TASS AND NOVOSTI ARE IMMUNE FROM OUR JURISDICTION, PARTICULARLY FOR LIBEL. WHITNEY AND PIPER SHOULD NOT, AS A MATTER OF BASIC FAIRNESS, BE SUBJECT TO A DIFFERENT STANDARD SIMPLY BECAUSE THEY ARE PRIVATE CITIZENS. END TEXT.

2. WE ARE POUCHING YOU A COPY OF THE DECISION. VANCE

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